

**Senate Judiciary Committee Meeting
Scheduled for January 27, 2009
Room 303 at 9:00 AM**

**Informational Testimony Regarding SB 230 –the proposed revisions to the offense
of Contempt of Court**

- A youth in need of intervention who violates probation could be charged as a delinquent offender and placed in secure confinement under SB230.
- The Federal Juvenile Justice and Delinquency Prevention Act (JJDP Act) as amended in 2002 and attendant Federal regulations and guidance prohibit youth in need of care (non-offenders) and youth in need of intervention (status offenders) from being placed in secure confinement. While the JJDP Act provides an exception for youth in violation of a valid court order, Montana's court process does not meet the criteria required for federal approval to use the valid court order exception.
- Being in violation of the JJDP Act could result in local programs losing access to funding provided under Title II and a Title V of the JJDP Act for prevention and intervention services/programs for juveniles and their families in communities statewide.
- The applicable federal statutes, regulations and guidance are attached for your consideration.



Agency: Montana Board of Crime Control
Cil Robinson, Juvenile Justice Planner
Supervises monitoring of county compliance
with statutes as described under Part 19 of
the Youth Court Act
Phone: 444-2632 Email: cirobinson@mt.gov

42 U.S.C. 5603 [Sec. 103.] Definitions

(16) the term "valid court order" means a court order given by a juvenile court judge to a juvenile—

(A) who was brought before the court and made subject to such order; and

(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

42 U.S.C. 5633 [Sec. 223.]

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, projects, and activities. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State

plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

.....

“(11) shall, in accordance with rules issued by the Administrator, provide that —

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding —

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title

18, United States Code, or of a similar State law;

(ii) juveniles who are charged with or who have committed a violation of a valid court order; and

(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;

shall not be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles --

(i) who are not charged with any offense; and

(ii) who are —

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities.....

(23) provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense —

(A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;

(B) not later than 24 hours during which such juvenile is so held, an authorized representative of such

agency shall interview, in person, such juvenile; and

- (C) not later than 48 hours during which such juveniles is so held –
- (i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile; and
- (ii) such court shall conduct a hearing to determine –
- (I) whether there is reasonable cause to believe that such juvenile violated such order; and
- (II) the appropriate placement of such juvenile pending disposition of the violation alleged;

Rules and Regulations adopted by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the federal register Monday August 16, 1982, section 31.303(i)3(iv) further provide:

“All judicial proceeding related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law or to assure the juvenile’s appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.”

On page 22 of *OJJDP’s Guidance Manual for Monitoring* states,

“Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent offenders for their failure to appear. Similarly, status offenders who violate probation (by committing another status offense) remain status offenders.

Status offenders cannot be securely detained after adjudication unless all of the conditions of the VCO Exception (see below) are met. Juveniles who have committed a violation of the Youth Handgun Safety Act or are held in accordance with the Interstate Compact on Juveniles as enacted by the state are excluded from the DSO* requirement in total.”

*DSO stands for the deinstitutionalization of status offenders.